

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SHIRLEY NELSON et al.,

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Plaintiffs,

2

vs.

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BANK OF AMERICA, N.A.,

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ORDER

Defendant.

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This is a declaratory judgment action concerning a residential mortgage. Pending before the Court is a Motion to Dismiss (ECF No. 6). For the reasons given herein, the Court grants the motion.

I. FACTS AND PROCEDURAL HISTORY

In February, 2003, Plaintiffs Shirley and Ralph Nelson gave Defendant Bank of America, N.A. (“BOA”) a promissory note as a home equity line of credit. (Compl. ¶ 6, Jan. 2, 2013, ECF No. 1-3).¹ Because of the real estate crash, there is no equity in the subject property, making the second mortgage “unsecured.” (See *id.* ¶ 7). Plaintiffs sued Defendant in state court for declaratory judgment and quiet title to the effect that the second mortgage is either totally unsecured or only 10% secured, and that Plaintiffs may remove the second mortgage as an

¹The exhibit adduced, however, appears to be a first mortgage for \$206,050.

1 encumbrance against the property. Defendant removed and has moved to dismiss for failure to
2 state a claim.

3 **II. LEGAL STANDARDS**

4 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
5 claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of
6 what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47
7 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
8 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule
9 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720
10 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for
11 failure to state a claim, dismissal is appropriate only when the complaint does not give the
12 defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell*
13 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is
14 sufficient to state a claim, the court will take all material allegations as true and construe them in
15 the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
16 Cir. 1986). The court, however, is not required to accept as true allegations that are merely
17 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
18 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
19 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation
20 is plausible, not just possible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*,
21 550 U.S. at 555).

22 “Generally, a district court may not consider any material beyond the pleadings in ruling
23 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
24 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*
25 & Co.

1 whose contents are alleged in a complaint and whose authenticity no party questions, but which
2 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)
3 motion to dismiss" without converting the motion to dismiss into a motion for summary
4 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule
5 of Evidence 201, a court may take judicial notice of "matters of public record." *Mack v. S. Bay*
6 *Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court
7 considers materials outside of the pleadings, the motion to dismiss is converted into a motion for
8 summary judgment. See *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.
9 2001).

10 **III. ANALYSIS**

11 The Court grants the motion. There is no state or federal cause of action to strip a
12 security interest from a debt because of a loss of equity in the collateral. Counsel cites no legal
13 authority supporting the present claims.

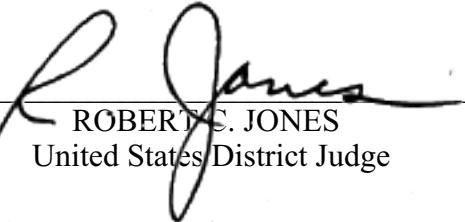
14 **CONCLUSION**

15 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 6) is GRANTED.

16 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

17 IT IS SO ORDERED.

18 Dated this 26th day of April, 2013.

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20 ROBERT C. JONES
21 United States District Judge
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